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## The Wilsonian Challenge to International Law

Leonard V. Smith

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After the Great War, Woodrow Wilson challenged the foundations of international law based on fully sovereign states. “Wilsonianism” as elaborated in the Fourteen Points, and in other speeches, rested on a logic that made a universalized liberal individual the locus of sovereignty in the new world order. The truly radical implications of Wilsonianism had no sterner critic than Robert Lansing, Wilson’s secretary of state and one of the founders of the *American Journal of International Law*. Lansing held tenaciously to a positivist paradigm of international law as it had evolved by the early twentieth century. This article reconsiders the conflict between Wilson and Lansing not so much as a duel between individuals as a duel between conflicting conceptions of sovereignty and the purpose of international law in the new world order.

### Introduction

As Secretary of State Robert Lansing told the story, President Woodrow Wilson informed him at a particularly tense meeting on 10 January 1919 “with great candor and emphasis that he did not intend to have lawyers drafting the treaty of peace.”<sup>1</sup> Only a former member of the legal profession

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<sup>1</sup>) Robert Lansing, *The Peace Negotiations: A Personal Narrative* (Boston: Houghton Mifflin Company, 1921), 107. This version appears to come from “The President’s Draft of a Covenant for a League of Nations,” a memo he apparently wrote to himself and found in the Lansing

could speak of it with such contempt.<sup>2</sup> Lansing, having made his career as an international lawyer, took the remark personally – the way he believed Wilson intended it.<sup>3</sup> A fixation on the personal has inflected much historical writing on Wilson, painting him as either a fool, or prophet, or martyr to idealism.<sup>4</sup> Lansing, while a decidedly more obscure figure today, had made a distinguished career as an international lawyer before he entered the Wilson administration. At the very least Lansing showed an ability to get under Wilson's skin intellectually and, in the end, politically. Peacemaking after the Great War was filled with larger-than-life personalities, and historians have long found it tempting to get caught up in their personal melodramas.

I would argue, however, that fixating on personalities can obscure far more important issues in the rebuilding of international law and world order after the Great War. The personal nature of what became a dysfunctional relationship between Woodrow Wilson and Robert Lansing is far from its most interesting feature. Of much greater significance are their two very different articulations of the relationship between law and sovereignty. Both believed that law followed from sovereignty, and not the reverse. The differences between them on the issue revolved around the locus of sovereignty,

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Papers at the Library of Congress, reprinted in Arthur S. Link, ed., *The Papers of Woodrow Wilson*, 69 vols., (Princeton: Princeton University Press, 1966–94), vol. 54: 3–4. Hereafter referred to as *PWW*. Tasker Howard Bliss, another member of the American delegation, also described the meeting in a letter to Secretary of War Newton Diehl Baker, 11 January 1919, vol. 53: 719–21.

<sup>2</sup> Wilson had practiced law briefly and unhappily in Atlanta in 1882–83. Though admitted to the Georgia bar, he soon fled the legal profession for doctoral study in political science and history at the Johns Hopkins University. See John Milton Cooper, *Woodrow Wilson: A Biography* (New York: Alfred A. Knopf, 2009).

<sup>3</sup> Lansing had joined the Wilson administration as counselor to the State Department in March 1914, and succeeded William Jennings Bryan as secretary of state in June 1915. Relations between Lansing and Wilson, never warm, steadily worsened over the course of the Paris Peace Conference. An infirm Wilson finally asked for Lansing's resignation in February 1920. On Lansing's career, see Thomas H. Hartig, *Robert Lansing: An Interpretive Biography* (New York: Arno Press, Dissertations in American Biography Series, 1982).

<sup>4</sup> For the former point of view, see the rather marginal book by Jim Powell, *Wilson's War: How Woodrow Wilson's Great Blunder Led to Hitler, Lenin, Stalin, and World War II* (New York: Crown Forum, 2005). Wilsonians have produced a more helpful historiography, such as John Milton Cooper, *Breaking the Heart of the World: Woodrow Wilson and the Fight for the League of Nations* (New York: Cambridge University Press, 2001).

and just how sovereignty produced law. Profoundly different imagined world orders resulted.

Why use Lansing as a counterpoint to Wilson on international law in the new world order? At the Paris Peace Conference, Lansing and Wilson were both political figures intensely interested in the theory as well as the practice of international law. Looking at them together makes it possible to view conflicting paradigms of the nineteenth- and twentieth-centuries in a single administration. This being said, Lansing likely would not even have claimed to be the most brilliant legal mind in the American delegation to Paris, a distinction that might have gone to James Brown Scott.<sup>5</sup> Indeed, Lansing merits at most passing mention in histories of international law covering this period.<sup>6</sup> Yet the conflicting views of Lansing and Wilson provide a unique way to study the interaction between politics and international law at a pivotal juncture, if we view each as to some extent embodying conflicting categories and objectives of the pre- and post-war eras.

Lansing was a figure closely identified with prewar international law, in which, in David Kennedy's words, "sovereignty became the central reference point for the field and came to have a uniform doctrinal meaning."<sup>7</sup> He thus fits well into Kennedy's call to re-examine nineteenth century legal theorists as they faced the challenges of reconstructing the international system after the Great War.<sup>8</sup> Wilson, for his part, was the self-conscious prophet of a paradigm shift in international law that in time would bring about, in Kennedy's words "the transformation of international lawyers into

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<sup>5</sup> See John Hepp, "James Brown Scott and the Rise of Public International Law," *Journal of the Gilded Age and Progressive Era* 7 (2008): 151–79.

<sup>6</sup> One mention in Francis Anthony Boyle, *Foundations of World Order: The Legalist Approach to International Relations, 1898–1922* (Durham: Duke University Press, 1999), 126; four in Mark Weston Janis, *America and the Law of Nations, 1776–1939* (New York: Oxford University Press, 2010), all of them a chapter entirely about Wilsonianism, 159–75.

<sup>7</sup> David Kennedy, "International Law and the Nineteenth Century: History of an Illusion," *Nordic Journal of International Law* 65 (1996): 403. He cites Lansing as an example of this uniformity of meaning on page 307. Kennedy's interpretation relies on the convention of a "long" nineteenth century, extending to the outbreak of the Great War in 1914.

<sup>8</sup> The "illusion" in Kennedy's subtitle "History of an Illusion" refers to a need of twentieth-century pragmatists to construct an illusory image of their forebears of the preceding century in order to distance themselves from them. See pp. 389–90.

polemicists for internationalism ...”<sup>9</sup> But as Kennedy suggested, the two eras could not be so easily disentangled as either Lansing or Wilson believed.

Before 1914, Lansing had published extensively on sovereignty and the origin of law. He operated within a positivist paradigm closely associated with the *American Journal of International Law* since its early days.<sup>10</sup> Law among nations proceeded not through the application of an abstract philosophical system, but experientially and gradually.<sup>11</sup> International law was thus the result of acts of consent among sovereign actors, nation-states that make treaties and create international legal institutions. Legal institutions operated primarily as instruments of arbitration, in accordance with precedents within the terms of the specific agreements among states through which these institutions were established. Thus, they did not “create” law except in the most incremental manner, through the interpretation of law as the expressed will of the states that had joined together for that purpose. From this state-centered view of international law, Lansing later provided a strident critique of Wilsonianism, the Paris Peace Conference, and the world order that both sought to create.

I take “Wilsonianism” here as the ideological sum total of the speeches of Woodrow Wilson. These speeches, and their author, have often been criticized as long on soaring rhetoric and short on specifics. At its worst, “Wilsonianism” in the eyes of its critics constituted little more than an incoherent amalgam of vague principles. I claim, however, that the problem with Wilsonianism was not its incoherence, but its radicalism. Wilson pushed nineteenth-century liberalism to its logical conclusion, and made the rational, ethically responsible individual the locus of sovereignty, and thus the giver of law. This self-sovereign individual constituted the building block of all larger political configurations, from the locality, to the nation, to the international system. This individual was the proper “self” of “self-determination.”

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<sup>9</sup> Kennedy, “International Law and the Nineteenth Century,” 390.

<sup>10</sup> See Boyle, *Foundations of World Order*, 10–12; Frederic L. Kirgis, *The American Society of International Law’s First Century: 1906–2006* (Leiden: Martinus Nijhoff Publishers, 2006); and Carl Landauer, “The Ambivalences of Power: Launching the *American Journal of International Law* in an Era of Empire and Globalization,” *Leiden Journal of International Law* 20 (2007): 325–58.

<sup>11</sup> On the distinction between positivism and “naturalism” in the nineteenth century, see Kennedy, “International Law and the Nineteenth Century,” 397–98.

Such a conception of sovereignty had revolutionary implications for international law. Wilson, in a nutshell, sought to take international law out of the hands of states and give it to the true sovereign. A global community of politically commensurable individuals would become the effective lawgiver on the most vital issues of international law – war and peace. In such matters, the sovereign would act according to a single ethical system applicable the world over. States and Great Powers would still exist, but they would have no legitimate interests incompatible with that ethical system. International law would simply reflect individual ethics on a global scale, and would be given the force of law through the common will of the collective citizenry of the world.

Such a conception of international law would have little patience for conventions such as arbitration or precedents, just as the person of Woodrow Wilson would show diminishing patience for the person of Robert Lansing as the peace conference proceeded. But the particulars of the peace settlement, and Lansing's critique of them, throw into sharp relief the different conceptions of the relationship between sovereignty and international law. Much more was at stake than the egos of two articulate and accomplished men of their time.

### **Sovereignty and the Origins of International Law**

Both Lansing and Wilson held to the positivist notion that law was an expression of sovereignty and not the reverse. As Lansing put it in 1907: "Laws are the expressions of the sovereign will."<sup>12</sup> But if law proceeds from sovereignty, the attributes and locus of sovereignty are of considerable significance in determining the source, legitimacy, and function of international law. Consequently, the differences between Lansing and Wilson over the role of international law in shaping international law in the wake of the Great War were not so much those of law as such, but of sovereignty.

Lansing wrote four major articles on sovereignty between 1907 and 1913, which were published together in 1921.<sup>13</sup> As a good positivist, he claimed a

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<sup>12</sup> Robert Lansing, "Notes on Sovereignty in a State," *American Journal of International Law* 1 (April 1907): 319. Hereafter cited as *AJIL*.

<sup>13</sup> Robert Lansing, *Notes on Sovereignty: From the Standpoint of the State and of the World* (Washington, D.C.: Carnegie Foundation for International Peace, 1921). This work brought together the following: "Notes on Sovereignty in a State," (two parts), *AJIL* 1 (1907): 105–28;

Burkean suspicion of theory, and an almost unlimited faith in the analytical possibilities of the “objective” observation of political society. “We live in a utilitarian age,” he wrote in 1913, “when the actual and practical dominate human thought.”<sup>14</sup> For Lansing, sovereignty reflected power, expressed as physical force. As such, sovereignty has a primordial character. When and where humans organize, there is sovereignty. In temporal affairs, “sovereignty may be defined as *the power to the extent of human capacity to do all things on the earth without accountability*.”<sup>15</sup> The sovereign is nothing more and nothing less than the individual or collection of individuals who command the preponderance of force: “He commands and is obeyed because he can compel obedience.”<sup>16</sup> Sovereignty precedes any form of law. As Lansing summarized the matter: “The supreme coercive physical power I would define as *sovereignty*; the expression of the dominant will or its possessor of possessors I would define as *law*.”<sup>17</sup>

In this sense, law is law, whether it comes from a chief wielding a club, a king issuing a royal decree, a president signing a bill into a law, or an international court of arbitration giving a ruling. As a function of sovereignty, law has no moral character ipso facto: “Might may make law, but might does not make right.”<sup>18</sup> Civil liberties could have a certain moral or ethical standing, but exist as a practical and legal matter only at the discretion of the sovereign. “Actual civil liberty,” Lansing wrote, “must not be confounded with the right of civil liberty.”<sup>19</sup> Legal institutions do not themselves make law, but can articulate the expressed sovereign will. Decisions of these institutions are thus accepted as law “by tacit acquiescence of the sovereign.”<sup>20</sup>

Of course, Lansing was well aware that human society left behind in prehistory a situation in which matters of superiority and subordination

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297–320; “A Definition of Sovereignty,” *Proceedings of the American Political Science Association* 10 (1913): 61–75; and “Notes on World Sovereignty,” *AJIL* 15 (1921): 13–27. Subsequent citations refer to the article versions.

<sup>14</sup> Lansing, “Definition of Sovereignty,” 62.

<sup>15</sup> Lansing, “Sovereignty in a State,” Part 1, 107. Italics in original.

<sup>16</sup> Lansing, “Definition of Sovereignty,” 64.

<sup>17</sup> Lansing, “Definition of Sovereignty,” 74. Italics in original.

<sup>18</sup> Lansing, “Sovereignty in a State,” Part 1, 122.

<sup>19</sup> Lansing, “Sovereignty in a State,” Part 2, 306–307.

<sup>20</sup> See Lansing, “Sovereignty in a State,” Part 2, 315–17.

were resolved by physical force alone. Habitual obedience, first to the hereditary proprietors of sovereignty, then to more popular based political communities, created various manifestations of “artificial” sovereignty. “Artificial” means simply sovereignty institutionalized through something other than the direct application of physical force. Theoretically, law can come from either the “real” or the “artificial” sovereign. Most commonly, the real sovereign creates the institutions of the artificial sovereign, which administers the peaceful, day-to-day exercise of power.<sup>21</sup> But by definition, the real sovereign cannot disappear, and retains the ultimate power to decide. The most important example was the American Civil War, which continued to haunt American legal thinking at the time Lansing wrote. North and South never tested secession in the federal courts or in the Congress, rather on the field of battle in a resort to brute force. The “real” sovereign of the United States prevailed, and imposed its will over the Confederacy. That outcome determined the locus of sovereignty over the national territory.<sup>22</sup>

By the beginning of the twentieth century, sovereignty throughout the world had expressed itself in the state, in Lansing’s words “the highest form of a political organism in that it has attained complete development.”<sup>23</sup> What he described as a “political state” is simply a community organized to exercise sovereignty. A “territorial state” constitutes the geographic region over which the political state rules. Both remain distinct from the “nation,” most commonly meaning an ethnic or linguistic community.<sup>24</sup> Lansing agreed with Henry Wheaton that a state, political or territorial, can exercise two forms of sovereignty – internal (pertaining to domestic affairs) and external (pertaining to foreign affairs).<sup>25</sup> In a federal union such as the United States, fully sovereign individual states surrendered their external sovereignty forever in accepting the 1787 constitution. Those states continued to possess significant internal sovereignty. But the federal government henceforth became the final and exclusive arbiter in their relations with each other, and in the external relations of the United States. The outcome

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<sup>21</sup>) See Lansing, “Sovereignty in a State,” Part 1, 115–16; 121–22.

<sup>22</sup>) See Lansing, “Sovereignty in a State,” Part 1, 127–28, and Robert Lansing, “Notes on World Sovereignty,” *AJIL* 15 (1921): 67–68.

<sup>23</sup>) Lansing, “Notes on World Sovereignty,” 13.

<sup>24</sup>) See Lansing, “Sovereignty in a State,” Part 1, 109–110.

<sup>25</sup>) Lansing, “Sovereignty in a State,” Part 2, 300–302.



of the Civil War, determined through brute force by the “real” sovereign of the Union, affirmed the federal government as the sole proprietor of external sovereignty.

Lansing authored an examination of sovereignty and the origins of law in the international system in 1906. But because, in his words, the piece “seemed too speculative and to lack the practical value” of the previous essays on sovereignty in a state, it was not published until 1921.<sup>26</sup> Strictly speaking, real “world sovereignty” existed in that body of individuals which could compel obedience on the part of the entire human race.<sup>27</sup> For the present, this sovereignty lacked organization as any form of world state and resided in the collectivity of individual states. No state could be considered truly independent, in that it could not hope successfully to resist the combined force of all the others. Consequently, Lansing wrote, “every state, whether strong or weak, whether great or small, whether rich or poor, whether civilized or barbarous, is in a sense a protectorate, a ward of the other states in the world, holding its political powers of them and responsible to them for its international conduct.”<sup>28</sup> He posited that an existing Community of Nations in the world, as it further articulated its rules of conduct through international law, would in time positively express its sovereignty in “an organized political union, a *Federal World State*.”<sup>29</sup> Thus, he did not take state sovereignty as intrinsically eternal in its current form. Indeed, his speculations on world sovereignty support Kennedy’s contention: “If nineteenth century international lawyers had a blind faith, it was in law, not sovereignty.”<sup>30</sup>

In the meantime, the political and territorial state constituted the practical locus of sovereignty in the present world. Basic principles of international law, such as the independence of states and the equality of states, evolved to provide enforceable rules of conduct within the Community of Nations. The equality of nations, on which Lansing would later base so much of his critique of Wilsonianism, was a manifestation of artificial world sovereignty.

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<sup>26</sup>) Lansing, “Notes on World Sovereignty,” 13. He claimed that he published the 1906 manuscript without revision.

<sup>27</sup>) Lansing, “Notes on World Sovereignty,” 14.

<sup>28</sup>) Lansing, “Notes on World Sovereignty,” 19.

<sup>29</sup>) Lansing, “Notes on World Sovereignty,” 19. Emphasis in original.

<sup>30</sup>) Kennedy, “International Law and the Nineteenth Century,” 405.

Just as citizens in a state claim an equal stake in the sovereignty of that state, each nation claims an equal stake in the sovereignty of the world.<sup>31</sup> But the equality of nations remains artificial rather than real, and by definition can exist only because it has not been tested by physical force. In other words, equality serves as a legal fiction that helps nations keep the peace, however essential its role in doing so.

In the normal workings of international relations, artificial world sovereignty continued to be articulated through “the great states of the civilized world [which] have recognized, perhaps unconsciously, its existence in the applied law of nations ...”<sup>32</sup> The rules of international law have accreted gradually, and “find expression in the practices and utterances of governments, and coincident interpretations are frequently set forth in treaties.”<sup>33</sup> Somewhat in contrast to his explanation of law as a function of sovereignty independent of morality, Lansing argued that “natural justice” has exerted a moral influence over international law over time as nations progress internally, and in their relations with each other. On certain broad issues such as piracy (a “crime against the world”) or the slave trade (a “crime against humanity”),<sup>34</sup> international repugnance has been such that efforts through international law to suppress them have attained the character of an explicit expression of world sovereignty.

Writing eight years before the outbreak of the Great War, Lansing foresaw a bright future for an international law, to apply Kennedy’s words, “flexible and innovative in its reasoning, deferential to state power, but cosmopolitan in its ambition”.<sup>35</sup> States would find it ever more convenient and fair to settle their differences through the law than by the sword. As states progress internally, international law would grow in authority as well as in virtue. As this happened, international relations and international law would increasingly reflect the will of the combined peoples of the world:

... the Law of Nations is based immediately upon morality, equity, and reason, those qualities which should be preëminent in the Universal Sovereign

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<sup>31</sup>) See Lansing, “Notes on World Sovereignty,” 21.

<sup>32</sup>) Lansing, “Notes on World Sovereignty,” 14.

<sup>33</sup>) Lansing, “Notes on World Sovereignty,” 23.

<sup>34</sup>) Lansing, “Notes on World Sovereignty,” 25.

<sup>35</sup>) Kennedy, “International Law and the Nineteenth Century,” 417.

of mankind, the perfection whose will should find manifestation in the laws emanating from the highest political authority in the world, a code perfect in righteousness.<sup>36</sup>

In turn, international institutions would follow the progressive teleology of international law, notably through international courts. Eventually, world sovereignty would find expression in a world state. Just as the Thirteen Colonies combined to form a federal union in the Constitution of 1787, the states of the world would likely combine one day to form a world state. This state “presumably will be of a federal character for two reasons, first, because the world is already divided into organized groups of individuals forming political states, and, second, because the federal state is the most highly developed political organism of modern civilization.”<sup>37</sup> History would not create a United States of the World in precisely the same way it created the United States of America. But no one should be mistaken about the universal character of American federal institutions.

Lansing’s prewar writings on sovereignty and international law remained reticent on two issues central to his later critique of Wilsonianism--the centrality of arbitration and the role of the Great Powers. His occasional and oblique references to arbitration are perhaps the more surprising, given how prominently his work with arbitration tribunals figured in his career before he joined the State Department.<sup>38</sup> Perhaps he simply took arbitration for granted as the obvious means through which to adjudicate international disputes, and thus not in need of extensive explanation. After the Great War, he clearly became more suspicious of the role of the Great Powers than he had been before it. In 1906, he praised the role of the “great states of the civilized world” in creating the Law of Nations. In a 1911 book review, he noted: “How far a concert of the Powers can go in controlling the affairs of the world is a subject of uncertainty, but it at least offers a means for the accomplishment of certain things which seem otherwise unattainable.”<sup>39</sup>

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<sup>36</sup>) Lansing, “Notes on World Sovereignty,” 27.

<sup>37</sup>) Lansing, “Notes on World Sovereignty,” 15.

<sup>38</sup>) See Ephraim Smith, “Robert Lansing and the Paris Peace Conference,” (Ph.D. Diss., Johns Hopkins University, 1972), 2–42.

<sup>39</sup>) Robert Lansing, Review of T.J. Lawrence, *The Principles of International Law*, *AJIL* 5 (1911): 1116–7.

During and after the Paris Peace Conference, he would bitterly criticize Wilson for doing just this.

Wilson had encountered contemporary thinking on international law long before he became president. Indeed, he taught a course entitled “International Law” at Princeton as early as 1892, though he admitted to his wife the common pedagogical challenge of staying ahead of his students.<sup>40</sup> In his 1889 college textbook, *The State*, Woodrow Wilson wrote: “Law is the will of the State concerning the civic conduct of those under its authority.”<sup>41</sup> He stated matters this way because, simply put, he could not imagine sovereignty residing anywhere else. International law, he wrote, is “not law at all in the strict sense of the term,” because “there is no authority set above the nations whose command it is.”<sup>42</sup> What Mark Weston Janis has described as Wilson’s “very limited, rather Austinian description of the role of international law in international relations”<sup>43</sup> would change profoundly – not because of he came to hold different views on the relationship between sovereignty and law, but rather on the locus of sovereignty. By 1918, Wilson had come to believe that the American experience had bred a political community that made the individual rather than the state the locus of sovereignty. “Wilsonianism” involved extending this community across the globe.

Historians well understand the profound and complex debt of Wilsonianism to the nineteenth-century liberal tradition.<sup>44</sup> Less well understood, perhaps, is just how radical a challenge Wilsonianism posed to an international order based on states, and consequently to a state-based paradigm of international law. The apparently unstable amalgam called “Wilsonianism” has a certain internal consistency if we consider the individual the building block of all political configurations. This individual is the proper “self” of

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<sup>40</sup> Janis, *America and the Law of Nations*, 159.

<sup>41</sup> Woodrow Wilson, *The State: Elements of Historical and Practical Politics* (Boston: D.C. Heath & Co., 1889), 610.

<sup>42</sup> Wilson, *The State*, 629.

<sup>43</sup> Janis, *America and the Law of Nations*, 162.

<sup>44</sup> See the enduringly perceptive essay by Richard Hofstadter, “Woodrow Wilson: The Conservative as Liberal,” *The American Political Tradition and the Men who Made It* (New York: Alfred A. Knopf, 1951), 230–78. See also Niels Aage Thorsen, *The Political Thought of Woodrow Wilson* (Princeton: Princeton University Press, 1988); and Thomas J. Knock, *To End All Wars: Woodrow Wilson and the Quest for a New World Order* (New York: Oxford University Press, 1992).

“self-determination.” All other configurations are simply this individual writ large.

To Wilson, the political individual was rational, autonomous, and morally accountable – thus in some sense “self-sovereign.” He<sup>45</sup> was guided by a system of universal ethics that were arguably Kantian, but probably more directly descended from Calvinist theology and its secularized reformulation in the Scottish Enlightenment.<sup>46</sup> Simply put, political individuals were people who could make covenants. “Covenant” was not a term commonly used in American diplomacy either before or after Wilson. Individuals make covenants, as a sacred and irrevocable vow committing them totally and individually to each other. In so doing, they become a kind of sacralized community. The Biblical Hebrews became a people through a covenant, as did the Pilgrims in colonial Massachusetts. Americans became a people through the *de facto* covenants of the Declaration of Independence and the United States Constitution. Religious or civil, a covenant for Wilson had a quasi-religious quality, and constituted an individualized and totalized commitment to the collectivity. The covenant made the individual both the author and the object of law, whatever the national community to which he belonged.

Wilson’s individual who freely bound himself by covenant constituted the building block of political society, from the smallest locality to the global community. It was not by chance that Point I of the Fourteen Points referred to “open covenants, openly arrived at,” and that the Treaty of Versailles began with “The Covenant of the League of Nations.”<sup>47</sup> To Wilson, victory in the Great War could become complete only by placing covenants and the universalized political individual capable of making them at the center of a new international order.

Locating sovereignty at the level of individual had truly radical implications. In a fully Wilsonian world, all political collectivities would comprise like individuals who wanted the same sorts of things from the collectivity.

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<sup>45</sup>) Like many liberals of his day, and notwithstanding his debt in the close presidential election of 1916 to votes from women in states in which they had the suffrage (see Knock, *To End All Wars*, 101), Wilson tended to construe the political individual as male and white.

<sup>46</sup>) On the influence of Wilson’s Calvinist religious beliefs, see Hofstadter, “Conservative as Liberal,” 234–35; and Thorsen, *Political Thought*, 4–11.

<sup>47</sup>) This widely available text will be cited only by internal references.

This made possible the subtle but critical shift in Wilson's language from 1915 on, from references to "consent of the governed" to "self-determination."<sup>48</sup> The liberal individual made both terms expressions of the same thing. Commensurable individuals would make commensurable covenants, in communities ranging from regional religious communities to the community of nations itself.

Difference did not disappear within the Wilsonian community. Some forms of difference, such as religion and ethnicity, could be recognized and legitimized, but would remain bounded by the values of the covenanted community. Some forms of difference, notably race, could determine whether individuals or categories of individuals were eligible to make a covenant at all. Likewise, racial difference could determine whether a given community merited "self-determination." The successful management of difference, Wilson believed, had made the United States a universal example to inspire the world. It was utterly without irony or fear of self-contradiction that Wilson and Wilsonians could speak of a disinterested and unselfish American approach to peacemaking, and of remaking the world in the image of the United States.<sup>49</sup>

"World government" would thus exist at the level of the individual, in a global community of commensurable, self-sovereign citizens. The task of peacemaking after the Great War involved nothing less than establishing institutions that would properly express this sovereignty. The nation-state, and most particularly the Great Powers, did not need to disappear. Indeed, the Great Powers as an organized collectivity would play a pivotal role both in making the peace and in the League of Nations. But in the Wilsonian Promised Land, states in general and Great Powers in particular would operate in accordance with the will of the liberal individuals they comprised. These individuals would make up a single global community that would keep states in check. Collectively, they had a sovereign will beyond that of the nation-state. First among the wishes of the sovereign people of the world,

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<sup>48</sup>) On this shift, see Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (New York: Oxford University Press, 2007), 42–43; and Michla Pomerance, "The United States and Self-Determination: Perspectives on the Wilsonian Conception," *AJIL* 70 (1976): 1–27, esp. 1–3.

<sup>49</sup>) See also Leonard V. Smith, "Les États-Unis et l'échec d'une seconde mobilisation," in Stéphane Audoin-Rouzeau and Christophe Prochasson, eds., *Sortir de la Guerre de 14–18* (Paris: Tallandier, 2008), 69–91.

Wilson held, was the formation of a community of states by covenant, the League of Nations. Once established, the League would both draw from and reinforce the inherently liberal character of the peoples of the world.

In his speaking tour of major Allied cities before the opening of the Paris Peace Conference, Wilson explained that an international covenant formed by the victorious powers at the time of the Armistice through accepting Wilsonianism as the ideological basis of the peace had forever changed the world order. “Men have never before realized,” he said at a state banquet in Buckingham Palace in London on 27 December 1918, “how little difference there was between right and justice in one latitude and in another, under one sovereignty and another.”<sup>50</sup> He added the next day at the Guildhall in London that “the ground is cleared and the foundations laid – for we have already accepted the same body of principles.”<sup>51</sup> No politician and no nation dared resist the expressed will of the true sovereign, as he told an audience at the Free Trade Hall in Manchester on 30 December 1918: “We are not obeying the mandates of parties or of politics. We are obeying the mandate of humanity.”<sup>52</sup> This rephrased the extraordinary statement he had made in the “Metropolitan Opera” speech before the Armistice, on 27 September: “The common will of mankind has been substituted for the particular purposes of individual states.”<sup>53</sup>

Paradoxically, given its reliance on self-sovereign individualism, Wilsonianism carried within itself a theory of power in general, and the Great Power in particular. Wilson assuredly believed that power existed, and that it was distributed unevenly among the nations and peoples of the world. The point was more how those with power used it. He told listeners at the Guildhall in London on 28 December 1918: “the small and the weak could never live free in the world unless the strong and the great always put their power and their strength in the service of right.”<sup>54</sup> As a career educator,

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<sup>50</sup>) Woodrow Wilson, *International Ideals: Speeches and Addresses made during the President's European Visit, December 14, 1918, to February 14, 1919* (New York: Harper & Brothers, 1919), 24.

<sup>51</sup>) Wilson, *International Ideals*, 30.

<sup>52</sup>) Wilson, *International Ideals*, 45.

<sup>53</sup>) *Selected Addresses and Public Papers of Woodrow Wilson*, Albert Bushnell Hart, ed. (New York: Bone and Liveright, 1918), 276.

<sup>54</sup>) Wilson, *International Ideals*, 28.

Wilson certainly had no trouble with the notion that some knew better than others just what “right” constituted. As a Progressive who became a wartime president, Wilson was likewise comfortable with centralized direction first of the affairs of his own nation, and then those of the world, provided the directors remained subject in one way or another to a *de facto* plebiscite from below.<sup>55</sup>

The victory of the Allied and Associated Powers, Wilson believed, had resulted from a historic combination of might and right. At the time of the Armistice, the Great Powers had had accepted a common set of principles as the foundation for the new world order. They had thus become “great” in a moral as well as material sense. Accordingly, they deserved a predominant voice in determining the peace. To evoke terms coined later by Carl Schmitt, the Great Powers claimed sovereignty over the world order by claiming the right to decide upon the exception – what there was to decide as well as how to decide it.<sup>56</sup> As such, they constituted a liberal “vanguard” uncomfortably parallel to the band of Bolsheviks at that very moment endeavoring simultaneously to maintain control in Moscow and to overthrow the world order. Much to the consternation of Lansing, Wilson readily accepted an organization of the Paris Peace Conference that centralized decision-making not just in the hands of the Great Powers, but ultimately in the hands of the “Big Four” (himself, French premier Georges Clemenceau, British Prime Minister David Lloyd George, and Italian Prime Minister Vittorio Orlando).<sup>57</sup> Wilson saw no inherent problem with concentrating power in a handful of suitably enlightened individuals, provided they fashioned the peace in accordance with the presumed will of the global sovereign.

In short, Wilson construed the victory of 1918 as heralding a revolution in sovereignty across the globe. “Humanity,” in the form of millions of liberal individuals operating in accordance with common values and ethics, had become the effective world sovereign. They were most self-evidently in charge in the great Western democracies, whose adulation of Wilson in

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<sup>55</sup>) On Wilson’s views on centralized power, see Frank Ninkovich, *The Wilsonian Century: U.S. Foreign Policy since 1900* (Chicago: University of Chicago Press, 1999), 67.

<sup>56</sup>) See Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, George Schwab, trans. (Chicago: University of Chicago Press, 1985 [originally published in German in 1922]).

<sup>57</sup>) On the dismay of the secretary of state over this issue, see Lansing, *Peace Negotiations*, Ch. XVII, “Secret Diplomacy,” 213–42.



Europe in the weeks preceding the Conference he interpreted as a plebiscite on his way of seeing the world. The immediate instrument of the global sovereign was the Peace Conference itself. It was up to the peacemakers to create institutions and to make international law that expressed the sovereign will. Nothing could have posed a more formidable challenge to a state- and precedent-based notion of international law held by Robert Lansing.

### **International Law and the Covenant of the League of Nations**

Of course, we cannot reduce the Paris Peace Conference to the Versailles Treaty (which in any event ended the war only with Germany), still less the Versailles Treaty to the Covenant of the League of Nations with which it began.<sup>58</sup> But it was through the League that the Wilsonian challenge to international law comes through most clearly. It is also through Lansing's criticism of the League and its creation of the mandate system that his critique of Wilsonianism proved most incisive.

Wilson's intention to make the League of Nations the centerpiece of a new world order was well known before the Armistice. He could scarcely have made the point more plainly than in the "Metropolitan Opera House" speech of 27 September 1918. "The constitution of the League of Nations, and the clear definition of its objects," he proclaimed, "must be a part, is in a sense the most essential part, of the peace settlement itself."<sup>59</sup> He continued that nations could not effectively end the Great War without fundamentally restructuring the way they conducted their affairs: "It [the League] is necessary to guarantee the peace; and the peace cannot be guaranteed as an afterthought." This rendered moot Lansing's contention that the Conference should first write a treaty or treaties ending the war, and then turn its attention to the design of an international organization.<sup>60</sup> It also virtually guaranteed that Wilson personally would lead the United States delegation, as the prophet of the new world order would be unlikely to delegate so important a task.

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<sup>58</sup>) Narrative histories of the peace conference commonly end with the signing of the Versailles Treaty, most recently the well-crafted book by Margaret Macmillan, *Paris 1919: Six Months that Changed the World* (New York: Random House, 2003).

<sup>59</sup>) Wilson, *Selected Addresses*, 278.

<sup>60</sup>) See Lansing, *Peace Negotiations*, Ch. III, "General Plan for a League of Nations," 28–47.

The Covenant of the League of Nations served as the preamble to all five treaties produced by the Paris Peace Conference.<sup>61</sup> One of the goals stated in the preamble was “the firm establishment of the understandings of international law as the actual rule of conduct among Governments.” But what status did this goal confer on the League as an organization? To be sure, it was established by treaty among sovereign states. As such, Francis Anthony Boyle has concluded, the League as Wilson conceived it fit in with a “modern legalistic approach to international relations.”<sup>62</sup> Likewise, Janis has agreed that the League constituted the culmination of Wilson’s “all-encompassing conversion to the promise of international law....”<sup>63</sup> But Wilson scholar Lloyd Ambrosius has disagreed, and has maintained instead: “the League was not viewed by Wilson primarily as an instrument of international law. Rather it promised a new morality.”<sup>64</sup> I would agree with Ambrosius that Wilson never intended the League to be, at least at its inception, an instrument of the day-to-day details of international law. Indeed, Article 14 of the Covenant deferred to a future proposal for the establishment of a Permanent Court of International Justice.

Nevertheless, if law expresses the will of the sovereign, the League as designed would indeed make international law in the name of the people of the world on the very issue that mattered most – war and peace. Moreover, through the mandates system, the League established a structure for a post-colonial world order that would establish Wilsonian sovereignty as far across the globe as Western race theory of the day would allow. Lansing understood as well as Wilson or anyone else that the logic of the Covenant shifted the locus of sovereignty from the state to “the people,” conceived as the global community of self-sovereign individuals. In private and eventually in public, he opposed the Covenant accordingly.

By virtue of their moral and material power, the Great Powers would play the leading role in directing the League of Nations. The new organization

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<sup>61</sup> That is, the treaties of Versailles (with Germany, June 1919); Saint-Germain (Austria, September 1919); Neuilly (Bulgaria, November 1919); Trianon (Hungary, June 1920); Sevres (Turkey, August 1920).

<sup>62</sup> Boyle, *Foundations of World Order*, 8–11.

<sup>63</sup> Janis, *America and the Law of Nations*, 169.

<sup>64</sup> Lloyd E. Ambrosius, “Democracy, Peace, and World Order,” in *Reconsidering Woodrow Wilson*, John Milton Cooper, ed., (Baltimore: Johns Hopkins University Press, 2008), 230.

would comprise a Council and an Assembly, assisted by an administrative secretariat. The five Great Powers would sit permanently on the Council, together with four other rotating members, to be selected by the Assembly (made up of all League members). The writ of both the Council and the Assembly was described in exactly the same words. Both “may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world. [Articles 3 and 4].” But the Council would remain the senior body. It would advise on the fulfillment of Article 10, perhaps the most sweeping provisions of the Covenant, which guaranteed the “territorial integrity and existing political independence of all Members of the League.” The Council would be responsible for managing international disputes, and for recommending further action if diplomacy and arbitration should fail (Articles 12–17). It would also make recommendations to protect collective security arrangements (Article 16–17), according to which an attack on any member of the League would be considered an attack on all.

Despite their central role in the League, the Great Powers were not supposed to make law on war and peace according to the rules of nineteenth century realism, rather, according to the principles that had brought them together at the time of the Armistice, now institutionalized by the Covenant. Their legitimacy as Great Powers had to rest on moral as well as material grounds, as a beacon and protector to the rest of the world. Their will to peace would have to exist through the will of the others. Only this collective intentionality could make workable Article 5, which called for unanimity in all League decisions, both in the Council and the Assembly. Errant states, Great Powers or otherwise, would be set to right by appeals to “the people,” both within that state and beyond it. Wilson plainly showed how he meant the League to function even before it was established, in what proved his ill-fated appeal to the Italian people in April 1919 over the fate of Fiume on the Adriatic Sea.<sup>65</sup>

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<sup>65</sup>) Fiume was a ferociously contested example of “self-determination,” over whether the city would be incorporated into Italy or the new South Slav state. A likely small Italian majority in the city proper existed alongside a clear South Slav majority in the suburbs. Wilson tried (and failed) to resolve the matter by appealing to the Italian people over the heads of their own government. See Daniela Rossini, *Woodrow Wilson and the American Myth in Italy: Culture, Diplomacy, and War Propaganda*, Anthony Shugaar, trans., (Cambridge: Harvard University Press, 2008), Ch. 7, “The Paradox of the Fiume Affair,” 169–192.

In the long run, the viability of the structures set up by the Covenant would have to depend the most radical Wilsonian proposition – that all political collectivities, in particular the Great Powers, considered themselves accountable to the sovereign people of the world, presumed as one always to want peace. In this sense, the League would create the reality posited in the Covenant. The subtle but profound shift in the locus of sovereignty beyond the Great Power and even beyond the nation-state made the Covenant a revolutionary document in the history of international relations. The true world sovereign would henceforth be the final authority in making international law on war and peace.

Thinking about the League in this way makes it possible to reconsider a standard realist critique of Wilsonianism – its naïve reliance on moral suasion rather than material power. This critique lies at the heart of Ambrosius's argument that Wilson never considered the League an instrument of international law. But if the true locus of sovereignty on the most basic matter of international law is the global community of self-sovereign individuals, and if each of those individuals is guided by common values, moral suasion *is* power of the most efficacious kind. Physical force, should it be required in some future international conflict, would operate only in the name of the superior, moral force of the sovereign people of the world.

Conceiving the League as the organizer of global popular sovereignty on war and peace also makes it possible to make sense of Wilson's otherwise bizarre claim during the "League fight" that Article X obligated the United States morally rather than legally, and did not infringe upon its traditional freedom in international relations.<sup>66</sup> As quintessential global as well as American citizens, Wilson's compatriots would see to it that their country upheld the right in the world. They would do so first by moral force, then by physical force if necessary, as they had done in joining the Great War in 1917. To paraphrase the language of Rousseau's *Social Contract*, in committing themselves to the world, American citizens and the republic they ruled would remain as free as before.

There can be little doubt that Wilson saw the League as something more than the sum of the national sovereignties it comprised. As he put it in introducing the Covenant to the Plenary Conference on February 14:

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<sup>66</sup> See Lloyd E. Ambrosius, "Woodrow Wilson, Alliances, and the League of Nations," *Journal of the Gilded Age and Progressive Era* 5 (2006): 149.

The significance of the result, therefore, has that deepest of meanings, the union of wills in a common purpose, a union of wills which cannot be resisted, and which I dare say no nation will run the risk of attempting to resist.<sup>67</sup>

The League was simply the organized expression of that will. As such, it would continue to create the reality of a global community of self-sovereign individuals. If liberalism depends on internalized, shared values, it has long been well disposed toward the external imposition of those values. Jeremy Bentham, after all, was an intellectual forebear to John Stuart Mill. Although he never used the Benthamite word, Wilson told the Plenary Conference at its second meeting on January 25 that he saw the League as the Panopticon of world peace, “the eye of the nations, to keep watch upon the common interest – an eye that did not slumber, an eye that was everywhere watchful and attentive.”<sup>68</sup>

Through the mandate system, the Covenant also sought to make new international law by providing for the disposition of the imperial domains of the defeated Central Powers. The mandate would provide an alternative to the traditional imperial acquisition, in which the colonial power simply appropriated the sovereignty of the conquered territory, either through direct rule or the establishment of a protectorate. Although the concept of a mandate owed more to General Jan Smuts than to Wilson, it fit well with the notion of a world of political communities governed by collectivities of self-sovereign individuals.<sup>69</sup> Article 22 of the Covenant spoke of “peoples not yet able to stand by themselves in the strenuous conditions of the modern world,” whose best interests and prospects constituted “a sacred trust of civilization.” At least in theory, the sole purpose of the mandate was to assist such peoples in learning to govern themselves. In other words, the mandate had a planned obsolescence. “The people” would eventually

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<sup>67</sup>) Wilson, *International Ideals*, 123.

<sup>68</sup>) Wilson, *International Ideals*, 101.

<sup>69</sup>) See Jan Christian Smuts, *The League of Nations: A Practical Suggestion* (London: Hodder and Stoughton, 1918), esp. pp. 11–24. A succinct overview of the origins and inception of the mandate system is Mark Carter Mills, “The Mandatory System,” *AJIL* 17 (1924): 50–62. For more recent thinking on the mandates, see Susan Pedersen, “The Meaning of the Mandates System: An Argument,” *Geschichte und Gesellschaft* 32 (2006): 560–82; as well as her “Review Essay: Back to the League of Nations,” *American Historical Review* 112 (2007): 1091–1117, esp. 1103–1107.

become sovereign across the globe, or at least those people belonging to races deemed eligible to make covenants.

As I have argued, the Wilsonian imaginary always accommodated difference that produced politically significant hierarchies. Wilson's own views on race are well known, notably his comfort with the increasing racial segregation of American society.<sup>70</sup> Accordingly, Article 22 posited a hierarchy of former colonies, based on a given people's propensity toward evolving into a proper liberal community – what would become the Class A, B, and C mandates. "Certain Communities" in the former Ottoman Empire deserved a kind of provisional recognition as independent states, and required only "the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone."<sup>71</sup> Other peoples, such as those of Central Africa, needed more direct rule, in order to guarantee "freedom of conscience and religion," in order to suppress the arms, drug, alcohol, and slave trades, and to prevent the raising of indigenous armies for nefarious purposes. For still other and less capable peoples, something that looked very much like outright colonial annexation seemed appropriate. These peoples and their territories "can best be administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the name of the indigenous population."

Yet where, as Lansing would later pointedly ask, did sovereignty actually lay in the mandates? Until the League actually came into existence, sovereignty in these territories evidently lay with the Great Powers, considering that they had begun to assign mandates and even before they signed the Versailles Treaty.<sup>72</sup> But thereafter, the implied answer seems clear. Sovereignty would lay with the peoples of the mandated territories, who would come into their inheritance once they acquired the characteristics of liberal political adulthood. According to racial beliefs of the day, some peoples would achieve adulthood swiftly, others at some indefinite point

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<sup>70</sup>) For a relatively sympathetic explanation, see Cooper, *Woodrow Wilson*, 270–73.

<sup>71</sup>) A dedicated band of Wilsonians sent to the Middle East in the summer of 1919 formulated a plan toward this end. See Leonard V. Smith, "Wilsonian Sovereignty in the Middle East: The King-Crane Commission Report of 1919," in Douglas Howland and Luise White, eds., *The State of Sovereignty: Territories, Laws, Populations* (Indiana University Press, 2009), 56–74.

<sup>72</sup>) On 7 May 1919, the Supreme Council of the Peace Conference allocated mandates of former German colonies in Africa and the Pacific. See Mills, "Mandatory System," 523.

in the future, still others perhaps never. Liberalism has always been about including commensurable individuals deemed eligible for membership in the political community rather than including absolutely everyone. The devil has always been in the details.

The League, in short, was supposed to create international law in establishing the foundations of a new order for the colonial world, and ultimately a post-colonial world. For the moment, it sought to make law only for the former colonies of the defeated empires. It assuredly did not imagine that all colonized peoples had been created equal, though it also posited that inclusion in the global community of self-sovereign citizens did not depend entirely on white skin. The assumption of self-governance in the mandated territories had to pose troubling questions about the continued viability of colonial rule on the part of states that did not happen to be on the losing side of the Great War. Wilson, himself the political heir of the American anti-colonial rebels of 1774, clearly saw the Covenant not as the exception to the rules of the international relations of colonialism, but as the first statement on those rules by the emerging global sovereign. As he put it to the Plenary Conference in introducing the Covenant on February 14:

We have had many instances of colonies lifted into the sphere of complete self-government. This is not the discovery of a principle. It is the universal application of a principle. It is the agreement of the great nations which have tried to live by these standards in their separate administrations to unite in seeing that their common force and their common thought and intelligence are lent to this great and humane enterprise.<sup>73</sup>

The philosophical differences between Lansing and Wilson on the role of international law in the new world order became clear as the Paris Peace Conference began. Wilson's previously noted testy remark about not permitting lawyers to draft the peace apparently occurred during a meeting of the American delegation in which Lansing presented his own ideas about the League of Nations. At the time of the Peace Conference, Lansing had developed a view of international law and world order that, in its way, was as transformative as that of Wilson. But it was based on a positivist, nineteenth-century understanding of the building of international law.

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<sup>73</sup>) Wilson, *International Ideals*, 130–31.

Lansing understood very well the revolutionary nature of the challenge posed by Wilsonianism, and he opposed it on that basis.

In Lansing's counter-vision to Wilsonianism, the victory of 1918 heralded a new dawn for international law, in which the world would pick up where the Hague Conventions of 1907 left off. Lansing's proposals for a League of Nations envisaged its primary function as juridical. A proper League would solve the great matters of war and peace through arbitration. As early as 17 December 1918, nearly a month before the Conference began, Lansing recounted a meeting with fellow American delegation member and Wilson confidante Edward House:

I urged him [House] in the course of our conversation 'to persuade the President to make the nucleus of his proposed League of Nations as an international court pointing out that it was the simplest and best way of organizing the world for peace, and that, if in addition the general principles of international law were codified and the right of inquiry confided to the court, everything practical would have been done to prevent wars in the future.'<sup>74</sup>

In more involved proposals written up on December 21, Lansing proposed that the International Council of the League (that is, the plenary) elect a 5-member Supervisory Committee, each member of which would serve a 2-year term.<sup>75</sup> The Supervisory Committee remained clearly the servant of the plenary Council, and not the executive body enforcing world peace as imagined in Wilson's proposal. The Council, and not the Committee, would call an international conference to revise the Hague Conventions of 1907.<sup>76</sup> The main duty of the Supervisory Committee would involve supervising

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<sup>74</sup>) Lansing, *Peace Negotiations*, 73. Lansing quoted here from one of his self-generated memos. House's diary entry written December 18 mentions meeting the other American plenipotentiaries, but makes no mention of Lansing specifically. Clearly, Lansing's argument did not make much of an impression on House. *PWW*, vol. 53: 437–39.

<sup>75</sup>) Lansing, *Peace Negotiations*, 56–57.

<sup>76</sup>) These proposals come from an additional document submitted by Lansing to the American delegation on January 7. Lansing, *Peace Negotiations*, 62–66. Given that Wilson's first draft Covenant is dated January 8, and that they differed so substantially from Wilson's most basic conception of the League, it seems safe to accept Lansing's contention that they were never seriously considered, or perhaps even read by Wilson or House. On the documentation of Wilson's first draft Covenant, see *PWW*, vol. 53: 652–86.



the arbitration of international disputes through a separately established Arbitral Tribunal. As he sought to rewrite Wilson's Covenant, Lansing held to the view that the supreme penalty for a nation for violating international law should be banishment from the community of nations rather than the threat of physical force.<sup>77</sup>

In his critique of Wilsonianism, Lansing's abiding fixation revolved around preserving the nation-state as the locus of sovereignty, even – perhaps especially – if doing so meant circumscribing the capabilities of the Great Powers. As his disconnect with Wilson became more serious, Lansing became increasingly concerned with the doctrine of the equality of nations. While, as I have indicated, this doctrine had not been a matter of great concern in his previous writings on sovereignty and international law. But it was quite consistent with nineteenth century notions, in Kennedy's words with specific reference to Lansing, of there being “but one sovereignty, an absolute discretion with a monopoly of force.”<sup>78</sup> This sovereignty could not be compromised in a given territory. International law that endeavored to reach beyond the sovereign state – as in the case of the League toward a sovereign liberal individual – could be neither legitimate nor effective.

On 5 September 1919, Lansing addressed the American Bar Association on legal questions pertaining to the Peace Conference. He distinguished between judicial and diplomatic ways to resolve international disputes. Diplomacy was about politics, working out agreements among nations more often than not unequal in power. By definition, the judicial pertained to law, which could resolve disputes only among equals:

... the two modes of settlement differ in that a judicial settlement rests upon the precept that all nations, whether great or small, are equal, but in the sphere

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<sup>77</sup>) See Lansing, *Peace Negotiations*, 37–38. On the general nature of this view among American specialists, see Hepp, “James Brown Scott.” Lansing appeared to have changed his views since 1909, when he wrote: “The aroused conscience of civilized states and the constantly increasing force of moral obligation can never form substitutes for an executive and the physical might upon which its authority rests.” Review of William I. Hull, *The Two Hague Conferences and Their Contributions to International Law*, *AJIL* 3 (1909): 261–62.

<sup>78</sup>) Kennedy, “International Law and the Nineteenth Century,” 407. Kennedy refers to Lansing, “Notes on Sovereignty in a State.”

of diplomacy the inequality of nations is not only recognized but unquestionably influences the adjustment of international differences.<sup>79</sup>

Lansing remained untroubled by the fact that the treaties establishing institutions of international law such as courts of arbitration were determined through diplomacy, and that as a result states could hardly be considered equal in the formation of international law. As S.W. Armstrong put it, legal equality did not imply political equality, in a liberal international order any more than in a liberal democracy.<sup>80</sup> States of varying capacities in material power would come together to agree on the principles of international law, and would thereby commit themselves to living according to its precepts. But in binding all states equally, international law affirmed the state as object of the law, and hence as the locus of sovereignty. No state could have its internal sovereignty compromised in the realm of the judicial.<sup>81</sup>

As Lansing wrote to himself in a memo of 22 November, “the legal principle [of the equality of nations], whatever its basis in fact, must be preserved, otherwise force rather than law, the power to act rather than the right to act, becomes the fundamental principle of organization....”<sup>82</sup> For Lansing, the linchpin of Wilson’s Covenant was the “positive guarantee” of Article 10, which obligated all members of the League to preserve each others’ independence and territorial integrity. Enforcement would occur on the advice of the League Council.<sup>83</sup> To Lansing, as to opponents of the League in the Senate, Article 10 committed the United States to potential foreign wars whatever its national will in the matter.<sup>84</sup> He also believed

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<sup>79</sup>) Robert Lansing, “Some Legal Questions of the Peace Conference,” *AJIL* 13 (1919): 636.

<sup>80</sup>) S.W. Armstrong, “The Doctrine of the Equality of Nations in International Law and the Relation of the Doctrine to the Treaty of Versailles,” *AJIL* (1920): 540–64, esp. 550–52.

<sup>81</sup>) On this point as it had evolved by the end of the nineteenth century, see Kennedy, “International Law and the Nineteenth Century,” 413.

<sup>82</sup>) Lansing, *Peace Negotiations*, 44.

<sup>83</sup>) Article 10 reads in its entirety: “The Members of the League shall undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled.”

<sup>84</sup>) As an alternative, Lansing put forward what he saw as a less controversial “negative guarantee,” in which League members would simply pledge that they would not violate the

that the Covenant as written also made the League *ipso facto* an oligarchy of Great Powers, as only they would have the physical force at hand to guarantee peace. The permanent majority the Great Powers would enjoy on the Council would simply institutionalize oligarchy as the agent structuring the international system.<sup>85</sup>

Of course, as Wilson had conceived the League, states (Great Powers or others) would no longer act as self-interested entities in a zero-sum game of global power. Rather, they would operate according to a globally applicable system of ethics, under the panoptical gaze of the League. If they failed to do so, popular opinion would be mobilized against them, in the territories under their own direct sovereignty and across the globe. If the League actually functioned as Wilson intended, the resort to physical force would seldom be necessary, if ever. But every nation's sovereignty would be under perpetual inspection by the League, as the instrument of the global community of citizens on which its legitimacy rested. This was precisely what Lansing had come to fear. He could scarcely have been surprised that Wilson did not grant Lansing's conception of a League serious consideration within the American delegation, let alone by the Conference as a whole.

As I have noted, sovereignty in mandated territories would clearly lay with "the people" once they became independent, a notion with which it is hard to imagine that Lansing would have disagreed. But where would sovereignty lay in the interim? The claim in Article 22 of the Covenant that "the well-being and development of such peoples form a sacred trust of civilization" did not clarify the situation. Nor did the claim that tutelage of these peoples would take place "on behalf of the League." In a memo to himself dated 2 February 1919, Lansing raised some pointed questions about the Mandates System that highlight the problematic character not just of the mandates, but of the League itself under international law.<sup>86</sup>

The appointment of a mandatory to exercise sovereign rights over a territory is to create an agent for the real sovereign. But who is the real sovereign?

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territorial integrity of other members.

<sup>85</sup>) See particularly Lansing, *Peace Negotiations*, Ch. 6, "The President's Plan and the Cecil Plan," 81–92.

<sup>86</sup>) Lansing, *Peace Negotiations*, 151–53.

Is the League of Nations the sovereign, or is it a common agent of the League, to whom is confided solely the duty of naming the mandatory and issuing the mandate?

... Does the League possess the attributes of an independent state so that it can function as an owner of territory? If so, what is it? A world state?

The language of Article 22 seemed to suggest that mandatory power was tutelary and administrative, and existed at the discretion of the League. But then, as Lansing noted, to whom would the mandatory powers answer? If they answered to the League, we would have to infer that the League was at least the provisional possessor of sovereignty in the mandates. If the League could possess sovereignty, even provisionally, it had an important attribute of a world state – something even its most avid proponents seldom dared say in so many words. If the mandatory powers were not accountable to the League, it is difficult to see how mandates differed from nineteenth-century style colonies and protectorates. Lansing, in fact, much preferred a clear transfer of sovereignty in the former German and Ottoman domains to the mandatory/colonial powers. Clearly, the Wilsonian vision had something else in mind, with profound implications for the articulation of sovereignty in the world order.<sup>87</sup>

## Conclusions

In two instances of what today we might call “acting out,” Woodrow Wilson and Robert Lansing stated with exceptional candor the issues at stake in their competing visions of international law and world order. On 9 May 1919, Wilson made some remarks after a private dinner hosted by Sir Thomas Barclay, a renowned barrister and vice-president of the International Law

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<sup>87</sup> Quincy Wright concluded by 1923 that “it is not certain that complete sovereignty rests anywhere” in the mandate system. He concluded somewhat weakly: “there will be a close approach to the truth in ascribing sovereignty of the mandated territories to the mandatory acting with the consent of the Council of the League.” See “Sovereignty in the Mandates,” *AJIL* 17 (1923): 694, 698. Such a description gives mandates a character not that distinct from colonies and protectorates. It would also seem to imply that the consent of the Council could become *pro forma*. After all, the Council included the three most important mandatory powers (Britain, France, and Japan) as permanent members.

Association. Wilson left little doubt that his reservations about lawyers went well beyond his personal frustrations with Robert Lansing:

International law has perhaps been a little too much thought out in the closet. International law has – may I say it without offense? – been handled too exclusively by lawyers. Lawyers like definite lines. They like systematic arrangements. They are uneasy if they depart from what was done yesterday. They dread experiments. They like charted seas, and if they have no chart, hardly venture to undertake the voyage. Now we must venture upon uncharted seas to some extent in the future. In the new League of Nations, we are starting out upon uncharted seas, and therefore, we must have, I will not say the audacity, but the steadiness of purpose which is necessary in such novel circumstances.<sup>88</sup>

Not content with insulting the profession of his audience, he went on to insult them as members of their social class. He continued that he considered it a great privilege at the Peace Conference to have been able to engage in “thinking for mankind, human thinking, thinking that is shot through with sympathy, thinking that is made up of comprehension for the needs of mankind.” In doing so, he confessed, “I must say that I do not always think of well-dressed persons.” Of course, only persons so attired would have been present at the dinner.

In the reprinted edition of these remarks, the always-sympathetic editors of the *Papers of Woodrow Wilson* attribute his rhetorical biting of the hand that literally had fed him to the accumulated stress of the Paris Peace Conference and to his deteriorating health. They suggest that in momentary disorientation, he fell back on well-worn talking points from his political campaigns. But I doubt Wilson said much to his hosts that he did not mean. “International law” as underpinned by nineteenth-century positivism had become part of the problem of unrestricted national sovereignty. “Mankind,” as he construed it in terms of race and gender as well as class, had to be recognized as the true world sovereign. That sovereign, Wilson believed, intended to lay down new international law on war and peace. As spokesman for the global community, Wilson had help construct an institution that would make law on mankind’s most vital concern. International lawyers, and international law as it had developed by 1919, could henceforth

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<sup>88</sup>) “After-Dinner Remarks,” typed manuscript, Woodrow Wilson papers, Library of Congress, reprinted in *PWW*, vol. 58: 598–600.

become part of the solution or remain part of the problem. Yet Wilson's outburst also highlights Kennedy's call to recognize what twentieth-century internationalist approaches to international law owed to its forebears. Wilsonianism, after all, had made the enlightened Great Powers the instrument of the world sovereign. And how could a Great Power be anything but the full expression of state sovereignty?

Masked in damnation through faint praise of the Versailles Treaty, Lansing's speech before the American Bar Association in September 1919 contained a withering denunciation of Wilsonianism clear to anyone who understood Lansing's views on what had happened in Paris. Certainly, the speech was a surprising commentary from the sitting secretary of state, the second highest-ranking member of the Wilson administration. On September 5, the day of Lansing's speech, Wilson was on the second day of his Western speaking tour, fighting for American participation in the League without reservations that would have severely weakened it.<sup>89</sup> Lansing's thinly veiled comparison of the ideas of his president with Bolshevism suggested he understood the revolutionary potential of Wilsonianism very well indeed. He argued that the late war had given rise to something he called "the communistic doctrine Mundanism."

This pseudo-Internationalism seeks to make classes *or in some cases individuals the units of world organization rather than nations*. It is the enemy of Nationalism which is the basis of world order as we know it. It is a real, though not always an open, enemy of national independence and of national sovereignty.<sup>90</sup>

Lansing argued that the millenarian aspirations of the Great War had given rise to two alternatives to the nation-state as the locus of sovereignty, the individual and the social class. Dislocating the state would have dire consequences across the globe. Though he did not explain just how, locating sovereignty at the level of the individual would shortly give way to locating

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<sup>89</sup>) Although Lansing could not have known it when he made the speech, Wilson would be fighting for his life just over a month later following a series of strokes. However, he was aware of Wilson's condition by the time the speech was published in the *AJIL* in October 1919. And he certainly understood how gravely Wilson had been stricken by the time he published his far more personal attacks in *The Peace Negotiations* (1921).

<sup>90</sup>) Lansing, "Some Legal Questions of the Peace Conference," 632. Emphasis added. All citations from this speech appear on this page.

it at the level of class. “We cannot ignore,” he continued, “the dangerous possibility that moderate forms [of Mundanism] may under certain influences develop into extreme [forms] and threaten our political institutions.” There seems little doubt that he meant Wilsonianism as one such “moderate” form. The nation, in short, had to be the guardian of order through sovereignty and the law, both internally and in the world system. Only full state sovereignty could save the world from Bolshevism. By September 1919, Lansing had also come to conflate “nation” and “state” in ways he had been careful to avoid in his prewar writings.

In his way, Lansing also illustrated the complex ties between pre-Great-War and post-Great-War paradigms of international law. Indeed, one could even interpret the rise of Wilsonianism in terms outlined in Lansing’s 1906 essay “Notes on World Sovereignty.” At the very least, Lansing’s earlier writings show the eagerness of a nineteenth-century positivist to engage change in the international order at the dawn of the new century. If one follows Lansing’s prewar argument into the postwar, the world sovereign had showed itself in the outcome of the Great War and the summoning of “the world” to the Paris Peace Conference, both to end that war and to create a new international system. That sovereign, one could argue, subsequently sought to make new international law on the most basic matters of war and peace through the League of Nations. I have argued that this, at any rate, was how Wilson saw it.

Lansing himself, however, seemed to recoil from the implications of his prewar speculations, to warn of what he saw as a dangerous new system. He sought refuge in the nation, and counseled ominously in his September 5 speech:

We ought to realize that the world cannot be organized on both Mundanism and Nationalism. The political cleavage must be between nations or between classes. We must choose between these two conceptions of world order.

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